



COMMUNITY DEVELOPMENT DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MAY 24, 2011

PRESENT: Mueller, Moniz, Tanda, Koepp-Baker, Benich, Dommer

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder, and
Development Services Technician (DST) Bassett

Chair Mueller called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened the floor to public comment for matters not appearing on the agenda.

Dick Oliver of Dividend Homes appeared. I will be out of the country and will be not able to appear at the meeting where the extension of the BMR reduction program will be discussed. I will be available by email if you have questions that you would like to ask. We cannot get loans from the bank for more than 10 units at Mission Ranch. That is why the BMR reduction program is very important to us. There is really not a great need for BMR units in the city right now. There are some units already available and buyers are having a difficult time qualifying for BMRs.

Mueller closed the floor to public comment.

MINUTES:

April 26, 2011

COMMISSIONERS KOEPP-BAKER AND MONIZ MOTIONED TO APPROVE THE APRIL 26, 2011 MINUTES:

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**THE MOTION PASSED (5-0-1-0) WITH THE FOLLOWING VOTE:
AYES: BENICH, KOEPP-BAKER, MONIZ, MUELLER, TANDA
NOES: NONE; ABSTAIN: DOMMER; ABSENT: NONE.**

May 10, 2011

**COMMISSIONERS KOEPP-BAKER AND TANDA MOTIONED TO
APPROVE THE MAY 10, 2011 MINUTES:**

**THE MOTION PASSED (5-0-1-0) WITH THE FOLLOWING VOTE:
AYES: BENICH, KOEPP-BAKER, MONIZ, MUELLER, TANDA
NOES: NONE; ABSTAIN: DOMMER; ABSENT: NONE.**

**ORDERS OF THE
DAY**

No changes.

**PUBLIC
HEARINGS:**

**1) ZONING
AMENDMENT,
ZAA-08-
18/EXCEPTION TO
LOSS OF
BUILDING
ALLOCATION,
ELBA-11-06:
DIANA-EAH**

A request to reaffirm the approval of a precise development plan for an 80-unit residential project proposed on an 8-acre project site bound by E. Dunne Ave., Butterfield Blvd., Diana Ave. and the railroad. The proposed project development plan would allow 40 townhouses, 40 senior apartment units, a 27,000 sq. ft. restaurant and two office buildings of approximately 19,000 sq. ft. An exception to the loss of building allocation is also requested for 40 building allocations awarded to the EAH senior apartment project.

Linder presented her staff report.

Benich: With respect to the zoning change, can you explain why this was not grouped with the 13 other projects that were previously reviewed?

Linder: It was an oversight that when the Downtown Plan was updated it changed the zoning designation on this plot. In that process the Planned Development was inadvertently eliminated. The project was going to utilize Measure A allocations but would need to have a new development agreement and site review but there was insufficient time prior to application for the Federal Tax credit program so they have applied for an ELBA.

Rowe: I can also add that the project has a development agreement but it has not been executed. So it would have been vested under the development agreement if they had done that. Nor have they filed a Vesting tentative map. And since they have not obtained building permits, it hadn't reached the threshold of achieving vested rights.

Benich: Are there two or three office buildings? The staff report says two but the site plan shows three.

Linder: The site plan is correct, so there will be three office buildings.

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Benich: Would those buildings allow for retail use so that people could walk to a little market?

Linder: When the downtown plan changed, retail was no longer allowed in this zoning—only office. But that is something that might be able to be amended in the future.

Benich: Based on the location, with no retail nearby, it should be amended for those seniors to have walking access to a market.

Tanda: How will this plan accommodate the possibility of the High Speed Rail (HSR)?

Linder: If that alignment occurs, the grade would have to be adjusted.

Tanda: So if the HSR occurs sometime in the future, would they have to mitigate after this project is approved and built?

Rowe: Yes. It would probably require the closure of the driveway closest to the railroad tracks, but the other one near Mama Mia's would remain open.

Moniz: In July the project is going to apply for a tax credit. The City committed approximately \$3.2 million to the project. Is that secure funding, or is it contingent on other factors?

Linder: The applicant is here and should answer that question.

Mueller: Considering the possibility of the HSR alignment, is there a plan in place for that?

Linder: No, but this project could be built before the decision for HSR is even made.

Mueller opened the floor to public comment.

Felix Au Yeung, Senior Project Manager appeared on behalf of the project.

Moniz: Is the tax credit integral to the funding of your project or are there other sources of funding?

Au Yeung: The tax credit is key. They announce the awards in September and then its 180 days to start of construction.

Moniz: What about the RDA funding?

Au Yeung: That has already been committed and expended, actually. It's all in the land. We have a commitment from the county for CDGB funds. We are also in the process of applying for MHSA funds.

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Moniz: What if you are unsuccessful?

Au Yeung: We will reevaluate the project and then reapply in March 2012.

Moniz: Would you have to re-do the site plan, or just reapply for the grants?

Au Yeung: We might change the site plan a little, but it would still be 40 senior units and 40 townhouses. But the tax credits are only for the 40 senior units. We have a purchase and sale agreement with another developer for the market rate side of the site.

Koepp-Baker: What are the conditions to qualify for the tax credits?

Au Yeung: We need zoning approval and building allocations.

Mueller: In your letter you alluded to some studies that would accept this change. You're going to need to be under construction before the decision on the HSR alignment is even made. You're going to need to get going soon. What changes are you planning to make?

Au Yeung: Based on the acoustical report, we're probably going to be shifting the building on the site. But it will actually probably be minor changes.

Mueller: I don't think the assumptions about the HSR you've made are correct. First, the elevated track is not the only possible alternative and the speed is probably too low. It's probably 175 mph.

Rowe: If the project is already built, the HSR will have to mitigate its impacts to this project.

Mueller: You may have done some analysis, but until the railroad does their EIR, we won't even know if that path is going to be chosen.

Dommer: What is the status of your contractor's bid?

Au Yeung: We have been getting construction estimates from bidders. We will update our bid prior to submitting for the tax credit application.

Dommer: What is your approximate budget for the project?

Au Yeung: I don't have that tonight.

**COMMISSIONERS BENICH AND TANDA MOTIONED TO
RECOMMEND RE-ADOPTION OF THE 2008 PRECISE DEVELOPMENT
PLAN**

**THE MOTION PASSED(6-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

COMMISSIONERS BENICH AND TANDA MOTIONED TO

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RECOMMEND APPROVAL OF A 12-MONTH ELBA FOR THE 80 ALLOCATIONS

THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE:

AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

**OTHER
BUSINESS:**

**2) AMENDMENT
TENTATIVE MAP
POLICY**

A request to amend City Council policy CP 06-04 "Tentative Subdivision Map Approval." The specific request is to eliminate the on-going project requirement, approved master plan requirement and eliminate the two year tentative map expiration for projects seeking tentative map approval for projects that are not fully allocated.

Linder presented her staff report.

Tanda: In the applicant's proposal, which provisions would staff not oppose?

Linder: I would not advocate limiting it to projects of 100 units. There are smaller projects that could potentially benefit from having complete tentative map approval. I'm saying we eliminate the word "large" in the second paragraph and the provision that a project be ongoing and have 50 percent of its units under construction in the second bullet.

Benich: How would this make the use of government time and resources more efficient?

Linder: It would result in fewer tentative map applications having to be processed. For instance, before Mission Ranch utilized this policy, we processed seven tentative map applications for that project. It's a repetitive process that takes a lot of staff time.

Moniz: For a large project, do you have the flexibility as staff to allow for changes which happen over the course of the project?

Linder: If they're minor adjustments the tentative map act allows us to make changes. But larger changes do not.

Moniz: There have been extensions to the Map Act. How does this affect those extensions?

Linder: We have honored those legislative extensions.

Moniz: Do all the changes they're proposing conform to the Map Act?

Linder: As far as I know.

Mueller opened the floor to public comment.

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Chris Borello appeared on behalf of the San Sebastian project: The impetus for this request was that the bank said that this only looked like a sixty unit project. We asked how we could get 50 percent financing. Then we looked at amending the policy for tentative maps so that we could get that financing. We think the tentative map policy is a good one because it gives you a very good idea of what the whole project will entail. Also, it's non-vesting; it won't create vested lots. Our goal is to push through as quickly as possible. We would gain six weeks between each review and so we would save time and that would save staff time as well.

Mueller: Why is the bank looking at a tentative map as different than a precise development plan?

Borello: The bank sees all the units on the tentative map as showing a 244 unit project.

Mueller: The precise development plan does the same thing. It allows a discretionary amount of lots and once you've completed those, you get more.

Borello: From what I've been told, the precise development plan doesn't carry as much weight as the tentative map.

Linder: Lenders don't understand the Residential Development Control System (RDCS).

Mueller: It has to be communicated to the lender.

Borello: When they're going to finance it, the bank views the agricultural land as having less value or equity than the allocated land.

Mueller: But it doesn't.

Borello: We've made it very clear that it's contingent on the RDCS. I'm just reporting on the conversations we've had.

Moniz: Are there conditions of approval with a precise development plan?

Linder: You would have a development agreement with conditions of approval. The tentative map would carry the subdivision conditions of approval.

Moniz: That's why it's important to have those up front in the tentative map, to make it easier to communicate with the lender, so there are fewer surprises.

Linder: But it's a non-vesting tentative map.

Koepp-Baker: This presents no liability for us?

Linder: They could not record the final map unless they had allocations that would match it.

Borello: It is more efficient for us this way also.

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Bill McClintock of MH Engineering appeared on behalf of the project. This has been a bit of a sore spot for us when there are projects that are developed over a large number of years. Being able to file a tentative map for more units than you have allocations for would save time and money. Then we wouldn't have to file a new tentative map every time 15 ongoing allocations are awarded. And there is no danger to the city because you can't record a final map until you have allocations.

Mueller closed the public hearing.

Mueller: Looking at the actual city policy, it says there must be an approved precise development plan. Is there any thought to change that?

Benich: Maybe we could exclude small and micro projects.

Mueller: Small and micro already meet the policy because they're fully allocated and so they're going to only file one map and be done. It's only for larger projects where this would be an issue.

Benich: Would this proposed change make it harder for a developer in the middle of a project to sell it to someone else who comes in mid-stream and wants to change the project?

Linder: If it's a dramatic change, they would have to come back and amend the precise development plan and the accompanying tentative map because those two need to match. They would have to apply for both at the same time, so it would require two applications at that time. If they didn't have allocations for the portion of the precise development plan they're changing, there wouldn't be a tentative map.

Mueller called for a break at 8:06 and reconvened at 8:16.

Linder: I would like to clarify what staff might consider as an amendment. In a nutshell it would be elimination of the work ongoing on paragraph 2 and elimination of the second bulleted item. The rest would remain the same.

Mueller: I can see changing the second bulleted item but not eliminating it. A tentative map in most cities means you have a legal lot. In Morgan Hill that's not true. It could be mis-assessed as to what is the value of the lots. The map could show 244 lots but the project might only have 15 allocations. This could cause people to be misled.

Benich: What if we required 20 to 25 percent allocated, instead of 10 percent?

Mueller: If it was 20 percent allocated and the project was under construction that would be much safer. Because in every other city tentative map means more than it does in Morgan Hill.

Moniz: First, I don't think any bank considers a tentative map as creating a legal lot. And second, it is up to the due diligence of the lending institution to find the

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answers that they need.

Mueller: The applicant is asking us to go too far. We have a voter initiative that says, “no lots without an allocation.”

Moniz: You’re making a big leap from tentative map to final map.

Rowe: The policy does say, “No residential development shall be undertaken and no building permits shall be issued unless a development allotment has been obtained.” It doesn’t technically say you have to have an allotment to get a tentative map approved. We have historically considered approval of the tentative map as the undertaking of development, but strictly it’s not that. It’s not a vesting map.

Tanda: I agree with Commissioner Moniz. It simplifies the process. And it is incumbent upon the lender to understand the RDCS policy of Morgan Hill.

Moniz: Bankers are used to the rest of California’s policy, so they don’t understand this. They view the tentative map as a sense of security.

Mueller: There are thousands of homes that have been built in Morgan Hill that didn’t have a tentative map from the beginning. Mission Ranch, Central Park and Coyote Estates were all over 100 units. Those projects were able to do it. I’m all for reducing the number of filings. But people are going to be misled as to the value of the property. They think they have more security than what they really have.

Tanda: Who are these people who are going to be misled?

Mueller: Investors in the project—just as the bank in this situation. People might not realize that they need to compete or understand all the conditions.

Benich: But by allowing the tentative map for the entire project, we’re helping projects get funding which will then help them finish their projects.

Moniz: It’s not incumbent on us do to protect somebody else’s investment potential. They need to do the due diligence themselves and come to their own conclusions.

Dommer: We’re not compromising the state regulations in any way by doing this?

Linder: No.

Moniz: I’m in support of fewer applications and less time.

Mueller: But as Jim stated, no permits may be issued without allocations and a tentative map approval.

Tanda: A tentative map is not a discretionary permit.

Mueller: It is a discretionary approval.

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Tanda: Correct, but the language says discretionary permit. Shouldn't we be getting the opinion of the City Attorney?

Rowe: The question is whether approval of a tentative map constitutes the undertaking of development. In the past, we have said that it does and you should first get a building allotment before you do that. But another point of consideration is that a tentative map is not the undertaking of development until you record the final map. Therefore, you could consider doing it without having corresponding building allocations for every lot on the tentative map.

Tanda: Is the recording of final map a discretionary action by the City? Can you withhold the final map approval?

Rowe: No, but the development agreement recordation is discretionary.

Mueller: The development agreement is actually approved in step one before you do anything.

Linder: Either you would have a new development agreement per year of allocation, or you would amend the original. So you might save a step in the tentative map process, but you would still need a development agreement which covers the next set of allocations.

Moniz: I think we're all in agreement with the other items. It's just bullet number two that we're dealing with.

Benich: So what we're really discussing is whether to change 50 percent to 20 or 25 percent, or remove it entirely. I'm in favor of eliminating the percentage.

Koepp-Baker: As long as it doesn't negatively impact the City and given that an applicant can adequately educate their banker regarding RDCS, this would save time and money and give builders some flexibility.

Moniz: It's clear where I stand.

Tanda: I support the proposal.

Dommer: I agree.

**COMMISSIONERS MONIZ AND BENICH MOTIONED TO APPROVE
AND AMENDMENT TO THE TENTATIVE MAP POLICY**

Mueller: I think this pushes the intent of the voter passed initiative too far and too early in the process.

THE MOTION PASSED (5-1-0-0) WITH THE FOLLOWING VOTE:

AYES: BENICH, KOEPP-BAKER, MONIZ, TANDA, DOMMER;

NOES: MUELLER

ABSTAIN: NONE

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ABSENT: NONE

**3) RESIDENTIAL
DEVELOPMENT
CONTROL
SYSTEM (RDCS)
NUMBER OF
ALLOCATIONS
FOR UPCOMING
COMPETITION
AND
DISTRIBUTION
BY
COMPETITION
CATEGORIES:**

Rowe presented his staff report.

Benich: If the number of allotments is based on the number of people who live in a household, with the 2010 census coming in, has ABAG given us a new number for persons per household?

Rowe: They have not yet released the persons per household estimates. And we only do that math on even years, not odd years.

Benich: But that number will probably go down?

Rowe: No, the total building allotment next year will probably go up because the DOF estimated the population to be 37,810 in April 2010. Then in January of this year it was 38,300.

Mueller opened the floor to public comment.

Dick Oliver of Dividend Homes appeared: Jim, you mentioned that there is talk of doing a two-year competition. What year would they do that?

Rowe: 2012.

Oliver: But I specifically remember the City Attorney ruling that there would have to be a competition every year.

Rowe: There will be a one-year competition in 2011 and a two-year competition in 2012. There wouldn't be a competition in 2013.

Mueller: The initiative doesn't allow you to skip a year where no allocations have been awarded. But allocations would have been awarded for 2012 and 2013 in that two-year competition.

Rocke Garcia of Glenrock Builders appeared: I thought I was being given ongoing allocations for the Kuwabara-Morgan Lane project on Main Street. But I see that we were not given any allocations.

Mueller: In December we agreed that it would be the final phase of the Warmington/Morgan Lane project. We didn't say that it would be considered "ongoing."

Garcia: If it's a final phase, I think it has to be considered ongoing.

Rowe: We discussed this in the November 30, 2010 Planning Commission meeting. Issue No. 2 was "evaluation of future applications/remainder parcels and planned developments." We had asked for policy direction on whether the balance was to be considered as a stand-alone project or be counted as a future phase of an existing project for scoring purposes. What was agreed to, that Commissioner Mueller is referring to now, is that we would allow for lot layout and orientation to

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be linked to the Master Plan of the Morgan Lane project, for scoring purposes. But the policy that deals with eligibility for ongoing projects is that it has to be actively building. Warmington has been complete for seven years. I think what we agreed was that this project could be associated with the Warmington development agreement but that it would have to compete for allocations because the project is not actively building.

Garcia: That is not my recollection.

Mueller: Staff is right. The policy says it has to be actively building.

Rowe: Originally, the policy stated that a project had to be actively building by September 30th. It was Dick's request that we amend the policy to allow for the project to be actively building by the time of the award of allocations in February to allow more time to meet the thresholds.

Moniz: It's true that they're not actively building. But they are more than half complete. They're in compliance.

Koepp-Baker: The reason the Jarvis project (Madrone Plaza) is not on the eligible list is because they have ceased construction.

Moniz: There are two options here, right? It either has to compete again on its own. Or it has to be linked to another project so it can qualify for points because it wouldn't be able to get them on a stand-alone basis.

Rowe: This is the same situation as the Martinez property connected to the Sherimar project. On its own, the Martinez lot probably wouldn't be able to get enough points in the competition.

Moniz: Or another other option is that it would be considered ongoing and would get the allotments by default?

Rowe: Yes, but that wasn't the subject of discussion in November 2010. The intent at that time was to link it to the Morgan Lane project so it could qualify for enough points in the competition. The difference with this project and Sherimar is that the Sherimar project showed the whole project on their maps. In this case, the Kuwabara project was never part of the original application but it was planned out by Warmington. There is an open space easement that is recorded over a portion of this property for the benefit of the HOA.

Mueller: This is similar to the South Valley Developers project (Madrone Plaza) on Cochrane. They have suspended construction, so they're not eligible for ongoing allocations. Otherwise, we would need to add them back onto the list as an eligible ongoing project. We have the definition of an ongoing project. It has already been determined that South Valley Developers is not actively building. There is no difference here. Your project is not actively building.

Garcia: What is the time delay allowed?

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Mueller: It has nothing to do with time delay. It's whether or not you're actively building. Your project is not.

Rowe: The point of the policy was that if a project stopped building because it lost its financing, it could not be considered as ongoing. The question is, do you continue to throw allocations at a project that is not building and can't qualify for financing? The decision was that that was not a wise thing to do. But once a project resumed, they could qualify for ongoing allocations. So the question is whether you want to treat this as an ongoing project, or whether they have to compete again in October.

Koepp-Baker: So this is the resumption of an earlier project with a new buyer.

Oliver: If that is going to be your decision, then I suggest that the number of units for small projects be increased from ten to 15, because there will be at least two projects competing in that category.

Mueller closed the floor to public hearing.

Mueller: So there are two decisions here: 1) Under the ongoing policy, does Roche's project qualify? I believe staff is saying no.

Moniz: Is that correct?

Rowe: Yes, it's not actively building. It would need to be building by February 12, 2012 but they have no allocations.

Dommer: When did the construction lapse?

Rowe: According to Garcia's testimony, Warmington finished the project seven years ago.

Mueller: We just need consensus. If we say it's ongoing, we would have to increase the ongoing allotments. If it's not ongoing, then he has to compete in the small category, and then we have to adjust that number. Either way, we have to make adjustments. Do we feel it's ongoing or not? If we consider it an ongoing, then I believe other policy changes would have to be made. Is the consensus that it's not ongoing?

Benich: I would have to defer to staff.

Koepp-Baker: If he's not considered ongoing now, when would he be considered ongoing?

Mueller: When he has allocations. That's the other consideration...how can you be considered ongoing when you have zero allocations?

Koepp-Baker: We've had other projects where a new buyer came in and took over an existing project.

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Mueller: But in all those situations, the project already had allocations. So is the consensus that it's not ongoing?

The consensus was that it was not ongoing.

Mueller: So we would need to make a change to Exhibit A of the Resolution. It should show Open Market going from 38 down to 33 and Small Projects going from 10 up to 15.

COMMISSIONERS BENICH AND DOMMER MOTIONED TO APPROVE THE NUMBER AND DISTRIBUTION OF RDCA ALLOCATIONS BY COMPETITION CATEGORIES WITH AN AMENDMENT TO EXHIBIT A CHANGING OPEN MARKET TO 33 UNITS AND SMALL PROJECTS TO 15

**THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Tanda: It appears possible that if all the potential eligible projects—of which there's five—were to all meet the deadlines, that would be an automatic 75 allotments that would come out of the 114 that are available. So the competition could boil down to just several dozen allotments left, if everyone that is eligible for ongoing allotments requested them?

Rowe: That is true, but it's not likely that it will happen.

Mueller: One year we had so many ongoing allocations that we didn't have any left over for allocations to other projects.

ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES

This is the last meeting that Commissioner Mueller will be serving as Chair. Also, there is a budget workshop on Thursday, May 26th, to discuss budget issues.

CITY COUNCIL REPORTS

The council agreed with every one of the Planning Commission's recommendations for the development agreement amendments and ELBAs that were requested at the April 26th PC meeting. The Council also agreed with the recommendation on the E. Dunne-Mendoza project to rescind their allocations. They have set a hearing for June 1st.

Tanda: How will the upcoming staff cuts affect the planning process?

Rowe: We can discuss that prior to the end of the fiscal year.

Benich: I want it noted that I am very disappointed that Public Works did not recommend the \$50,000 that we approved as part of the CIP budget for a gray water study.

HSR map discussion.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this

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meeting, Chair Mueller adjourned the meeting at 9:32 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician

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